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303 NLRB No. 127

D--2127
Highland Park, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

NRC, INC.

and

Case 7--CA--31505

LOCAL 134, UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS, AFL--CIO

July 23 1991

DECISION AND ORDER

By Chairman Stephens and Devaney and Raudabaugh

Upon a charge filed by the Union February 8, 1991, the General Counsel of the National Labor Relations Board issued a complaint on March 15, 1991, against NRC, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On May 3, 1991, the General Counsel filed a Motion for Default Judgment, with exhibits attached. On May 8, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board.''[1] Further, the undisputed allegations in the Motion for Default Judgment disclose that the Acting Regional Director for Region 7, by letter dated April 4, 1991, notified the Respondent that unless an answer was filed by April 18, 1991, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Michigan corporation, with an office and place of business in Highland Park, Michigan, has been engaged as a roofing contractor in the building and construction industry. At all times material, the Respondent has been an employer-member of the Toledo Area Sheet Metal and

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[1] The charge was sent by certified mail about February 8, 1991, but it was returned unclaimed by the Respondent. The Region then served a copy of the charge both by certified mail and regular mail on March 4, 1991. Thereafter, the complaint was sent by certified mail to the Respondent, but it was returned unclaimed. Copies of the complaint were mailed a second time to the Respondent on April 22, 1991, both by regular and certified mail. The Respondent's refusal or failure to claim certified mail does not constitute good cause for failure to file an answer and cannot serve to defeat the purposes of the Act. Oceana No. 1, Inc., 295 NLRB No. 10 fn. 2 (June 15, 1989); Powell & Hunt Coal Co., 293 NLRB No. 105 fn. 2 (1989).

Roofing Contractors Association, Inc. (Association), which is an organization composed of employers engaged in the construction industry and which exists, in whole or in part, for the purpose of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union.

During the calendar year 1990, a representative period, the employer-members of the Association collectively had gross revenues in excess of $1 million and, in the course and conduct of their business operations, purchased and caused to be delivered to their facilities located in the State of Michigan products, goods, and materials valued in excess of $50,000 received directly from points located outside the State of Michigan. During the calendar year 1990, a representative period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of $50,000 for Ford Motor Company, an enterprise within the State of Michigan, which annually manufactures automobiles and related products and causes products valued in excess of $50,000 to be shipped directly to points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen roofers, helpers, yardmen and registered apprentices, employed by Respondent, but excluding guards and supervisors as defined in the Act.

B. The Refusal to Bargain

Since about 1987, the Respondent and the Union have been parties to successive collective-bargaining agreements pursuant to Section 8(f) of the Act, the most recent of which is effective by its terms from July 1, 1989, through June 30, 1993. During all material times, the Union has been the recognized limited exclusive collective-bargaining representative of the employees in the unit within the meaning of Section 8(f) of the Act.

Since about July 19, 1990, and continuing, the Respondent has failed and refused to continue in full force and effect all the terms and conditions of the collective-bargaining agreement by failing to make fringe benefit fund payments and to submit to the plan administrator monthly fringe benefit reports, to remit dues and initiation fees deducted by the Respondent from employee-members' pay, to pay any liquidated damages for the late payment of fringe benefit funds and for the late remittance of union dues deductions, and to pay proper wages by issuing to unit employees insufficient fund checks.

We find that the Respondent, by failing to continue in full force and effect all the terms and conditions of the most recent collective-bargaining agreement, has been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing to continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union from July 19, 1990, and continuing, by failing to make fringe benefit fund payments and to submit to the plan administrator monthly fringe benefit reports, to remit dues and initiation fees deducted by the Respondent from

employee-members' pay, to pay any liquidated damages for the late payment of fringe benefit funds and for the late remittance of union dues deductions, and to pay proper wages by issuing to unit employees insufficient fund checks, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) by failing, inter alia, to make the required payments that have become due to the various fringe benefit funds, pursuant to the terms of its collective-bargaining agreement with the Union, commencing about July 19, 1990, and continuing, we shall order the Respondent to make the required payments that it owes to the appropriate funds, with interest and other sums applicable.[2] We also order the Respondent to submit to the plan administrator monthly fringe benefit reports.

We shall also order the Respondent to make its employees whole for any losses they may have suffered as a result of the Respondent's failure to make the contractually required benefit fund payments in the manner prescribed in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). This shall include reimbursing employees for any

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[2] Because the provisions of employee benefit fund agreements are variable and complex the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. Any additional amounts owed with respect to the funds will be determined in accordance with the procedure set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

contributions they themselves may have made, with interest, for the maintenance of any fund after the Respondent ceased making the benefit fund payments. Concord Metal, 295 NLRB No. 94, slip op. at 8--9 (June 30, 1989). Interest on any money due and owing employees shall be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

To remedy the Respondent's unlawful refusal to remit to the Union all dues and initiation fees owed to it, we shall order the Respondent to remit to the Union all union dues and initiation fees owed, pursuant to valid checkoff authorizations, with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Finally, we shall order the Respondent to pay liquidated damages as required by the collective-bargaining agreement for the late payment of fringe benefit funds and for the late remittance of union dues deductions.

ORDER

The National Labor Relations Board orders that the Respondent, NRC, Inc., Highland Park, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 134, United Union of Roofers, Waterproofers and Allied Workers, AFL--CIO, as the limited exclusive collective-bargaining representative of the employees in the bargaining unit by failing and refusing from about July 19, 1990, and continuing, to make fringe benefit fund payments and to submit to the plan administrator monthly fringe benefit reports, to remit dues and initiation fees deducted by the Respondent from the employee-members' pay, to pay liquidated damages for the late payment of fringe benefit funds and for the late remittance of union dues deductions, and to pay proper wages by issuing to unit employees insufficient fund checks, as required by the collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay the various fringe benefit fund payments that have become due under the collective-bargaining agreement from about July 19, 1990, and continuing, with interest, and submit to the plan administrator monthly fringe benefit reports, as set forth in the remedy section of this decision.

(b) Remit to the Union all union dues and initiation fees deducted by the Respondent from the employee-members' pay, pursuant to valid checkoff authorizations, with interest, as set forth in the remedy section of this decision.

(c) Make unit employees whole for any losses resulting from the Respondent's failure to adhere to the collective-bargaining agreement, including reimbursing them for expenses ensuing from the Respondent's failure to pay fringe benefits pursuant to the collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(d) Pay liquidated damages as required by the collective-bargaining agreement for the late payment of fringe benefit funds and for the late remittance of union dues deductions.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of money due under the terms of this Order.

(f) Post at its facility in Highland Park, Michigan, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 23, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 134, United Union of Roofers, Waterproofers and Allied Workers, AFL--CIO, as the limited exclusive collective-bargaining representative of the employees in the bargaining unit by failing and refusing from about July 19, 1990, and continuing, to make fringe benefit fund payments and to submit to the plan administrator monthly fringe benefit reports, to remit dues and initiation fees deducted by the Respondent from employee-members' pay, to pay any liquidated damages for the late payment of fringe benefit funds and for the late remittance of union dues deductions, and to pay proper wages by issuing to unit employees insufficient fund checks.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL transmit to the various fringe benefit funds the amounts that have become due under the collective-bargaining agreement from about July 19, 1990, and continuing, with interest, and WE WILL submit to the plan administrator monthly fringe benefit reports.

WE WILL remit to the Union all union dues and initiation fees deducted by us from the employee-members' pay, pursuant to valid checkoff authorizations, with interest.

WE WILL pay liquidated damages as required by the collective-bargaining agreement for the late payment of fringe benefit funds and for the late remittance of union dues deductions.

WE WILL make you whole, with interest, for any losses to you resulting from our failure to adhere to the collective-bargaining agreement, with interest.

NRC, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226--3219.